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# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF PROJECT MANAGEMENT/PERMITTING  
ALASKA COASTAL MANAGEMENT PROGRAM

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December 24, 2003

Ms. Guyla McGrady  
Department of Natural Resources  
Division of Mining, Land and Water  
Southcentral Region Land Office  
550 W. 7<sup>th</sup> Ave., Suite 900C  
Anchorage, AK 99501-3577

Dear Ms. McGrady:

**Subject: Duke Island Area Aquatic Farmsite Disposal  
Aquatic Farm Disposal Program  
State I.D. No.AK 0307-10J  
Final Consistency Response**

The Alaska Coastal Management Program (ACMP) Section of the Office of Project Management and Permitting (OPMP) has completed coordinating the State's review of your proposed project for consistency with the ACMP and developed the enclosed final consistency determination. Based on an evaluation of your project by the Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources, the OPMP concurs with your certification that the project is consistent with the ACMP and affected coastal district's enforceable policies.

By copy of this letter, I am informing the U.S. Army Corps of Engineers and State review participants of ACMP/OPMP's finding.

If you have any questions, please contact Sandy Harbanuk at 907-465-8791 or email [sandy\\_harbanuk@dnr.state.ak.us](mailto:sandy_harbanuk@dnr.state.ak.us). The State appreciates your cooperation with the ACMP.

Sincerely,

*S/S Sandy Harbanuk*

Sandy Harbanuk  
ACMP Project Specialist

Enclosure

cc: Mike Ostasz, DEC  
Jackie Timothy, ADF&G  
Wayne Dolezal – ADFG, Anchorage \*  
John Thiede, ADNR  
Mark Minnillo, ADNR\*  
Doug Sanvik, ADNR\*  
John Leeds, COE  
Scott Kelley, ADFG/RRDB\*  
Susan Round, Coastal District  
Steve Brockmann – USFWS, Juneau \*  
Katharine Miller – NMFS, Juneau \*  
Christina Nahorney – ADNR/DMLW, Anchorage \*  
Jim Anderson – ADNR/DMLW, Juneau \*  
Mark Minnillo – ADNR/OHMP, Craig \*  
Julie Raymond-Yakoubian – ADNR/SHPO, Anchorage \*  
Jeremiah Ingersoll, USFS, Ketchikan-Misty Fiords RD

\* = *Sent by email*

# ALASKA COASTAL MANAGEMENT PROGRAM

## FINAL CONSISTENCY DETERMINATION - CONCURRENCE

Date Issued: December 24, 2003

**Project Title:** Duke Island Area Aquatic Farmsite Disposal

**State ID No.:** AK 0307-10J

**Affected Coastal Resource District:** Ketchikan Gateway Borough

### Description of project subject to ACMP review:

*Summary:* The project subject to this consistency review is the use of tideland and submerged land for aquatic farming utilizing suspended culture. The nomination area is divided into five sites and consists of the following uses of tide and/or submerged land, as further described in the DNR Preliminary Finding and Decision for Proposed Aquatic Farmsite Leases Located Off Duke Island.

*General Locational Reference:* The project subject to this consistency review is the disposal of sites for suspended culture or intertidal culture in six locations in the area of Duke Island, south of Annette Island, approximately 70 miles southeast of Ketchikan and thirty miles southeast of Metlakatla. All of Duke Island has been identified by the U.S. Forest Service as a Special Interest Area (SA), and it includes the Duke Island Zoological Area. Part of the area north of Pond Bay has also been identified as a Research Natural Area.

For the land disposal program sites being proposed by DNR, the scope of this review covers the typical operations and state authorizations for the sites discussed below.

**KET-N030-033      Pond Bay/North Duke Island – Suspended Culture**  
Township 79S      Range 93E      Section 35, 36 CRM  
Township 79S      Range 94E      Section 31 CRM  
Township 80S      Range 93      Section 1, 2 CRM

A maximum use of 80 acres of tide and submerged land within Pond Bay is proposed for sites for aquatic farm leases for suspended aquaculture. The maximum number of lease sites will not exceed eight.

**KET-N079      West Pond Bay/North Duke Island – Intertidal Culture**  
Township 79S      Range 93E      Section 35 CRM  
Township 80S      Range 93E      Section 2 CRM

A maximum use of 20 acres of tide and submerged land on the west side of Pond Bay is proposed for intertidal aquatic farm lease sites. The maximum number of lease sites will not exceed two.

**KET-N034-038      South Duke Island – Suspended Culture**  
Township 80S      Range 94E      Section 32, 33 CRM  
Township 81S      Range 94E      Section 1, 2, 12  
Township 81S      Range 95E      Section 5, 6

A maximum use of 50 acres of tide and submerged land for the purposes of suspended aquatic farm lease sites within the area of south central Duke Island and north Kelp Island is being proposed. The proposal includes a maximum of five separate farm sites with a combined maximum acreage of not more than 50 acres located in the area between the northern shoreline of Kelp Island and the southcentral shoreline of Duke Island. *On September 17, 2003, the Department of Natural Resources, Aquatic Farming Program, notified OPMP that these sites would be reduced from five to three, and the maximum acreage from 50 acres to 30 acres.*

**KET-N080      East Duke Island/Morse Cove – Suspended Culture**  
Township 80S Range 94E      Section 20, 21 CRM

A maximum use of 20 acres of tide and submerged land within Morse Bay near the east side of Duke Island is proposed for aquatic farm leases for intertidal culture. The maximum number of lease sites will not exceed two.

**KET-N081-082      East Duke Island – Intertidal Culture**  
Township 80S      Range 94E      Section 15 and 21 CRM

Two areas within a maximum use of 30 acres of tide and submerged land on the east side of Duke Island are proposed for intertidal aquatic farm lease sites. Site A is located just inside the northern shoreline entrance of Morse Cove extended out of the entrance in a northeasterly direction. The proposed area of Site A will be 20 acres maximum. Site B is located at the southern entrance of Morse Cove. The proposed area of Site B will be 10 acres maximum.

#### All Sites:

Potential farm sites covered by this review are defined by, and must meet, operational standards considered by the agencies to be “typical.” The scope of the activities covered by this ACMP review includes the sites themselves and the “typical” standards for suspended culture and intertidal clam operations as identified in the DNR Preliminary Finding and Decision. In summary, those typical standards include:

- Generally start utilizing up to one acre of tide and submerged land.
- Suspended culture generally uses lantern nets, bags, trays or cages suspended from surface longlines or log rafts that are anchored at each end; contain all gear within the acreage requested; farm area delineated with clearly marked buoys.
- Typically, aquatic farm sites in Alaska utilizing suspended gear are on the average three acres in size with a 50’ X 50’ hardening area on the beach. Additionally, aquatic farmers typically build a work raft, which is anchored within the growing area.
- Alaska farmers generally use suspended culture techniques where single oysters are grown in nets or trays hung from floating loglines in waters 30-120 feet deep. This does not preclude the lessee to use a new or innovative culture technique as long as it is a suspended culture technique for the purpose of farming oysters, clams or scallops. In addition to the farm site area aquatic farmers generally utilize an area of approximately

50' x 50' in the inter-tidal area to hold animals out of the water where they are exposed to air for at least part of the day, a few weeks to a few months. This process will remove most of the fouling and harden the shell to extend the shelf life of the oyster. It can be expected that at a minimum shellfish will require a period of holding out of the water while awaiting results of PSP tests. Any holding area in the inter-tidal zone outside of the farm site boundary will be allowed only upon approval by the Department's of Natural Resources, Fish and Game and Environmental Conservation.

For the land disposal program sites being proposed by DNR, the scope of this review covers the state authorizations for the sites identified below and the typical operations discussed above.

**Activities not in the scope of review:**

The activities also require authorization by the U.S. Corps of Engineers. However, because individual applicants do not exist for the actual projects within the sites proposed by the state, and applicants will subsequently propose development plans for the sites after this review is completed, this review information does not include applications for a COE permit. Individual applicants may be able to fulfill COE requirements by obtaining a general permit (GP) #91-7N (Aquatic Farm Structures) and a Nationwide Permit #4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities)] from the U.S. Corps of Engineers. These permits were previously found consistent with the ACMP and would not require subsequent ACMP review. If an individual permit is required by the COE, and more than minor changes are made to the activities addressed by this determination, additional review for consistency with the ACMP may be required.

Activities may also require authorization from the U.S. Forest Service for any associated upland use within national forests. However, because individual applicants do not exist for the actual projects within the sites proposed by the state, and applicants will subsequently propose development plans for the sites after this review is completed, USFS permit applications are not included at this time. Individual applicants will be required to apply for all necessary authorizations. If an individual permit is required by the USFS, and more than minor changes are made as a result of that review, additional review for consistency with the ACMP may be required.

The activity of acquiring or transferring shellfish or aquatic plants is not subject to this ACMP review. The activity requires authorization from the Department of Fish and game (Shellfish and Aquatic Plant Transport and/or an Aquatic Stock Acquisition permit).

**Authorizations:**

The project must be found consistent with the ACMP before the following State authorizations may be issued:

Alaska Department of Fish and Game (DFG)  
Aquatic Farm and Hatchery Operation Permit  
Special Area Permit

Alaska Department of Natural Resources (DNR)

## Aquatic Farmsite Lease

The activity of acquiring or transferring shellfish or aquatic plants is not subject to this ACMP review. The activity requires authorization from the Department of Fish and game (Shellfish and Aquatic Plant Transport and/or an Aquatic Stock Acquisition permit).

Department of Environmental Conservation authorizations will be necessary at later stages of the authorized activities. These permits are not subject to ACMP review.

The activities also require authorization by the U.S. Corps of Engineers (COE) and possibly the U.S. Forest Service. See *Activities not in the scope of review*, above, for more information. The DNR Aquatic Farmsite Leases will be issued with an effective date of 2/2/04. State agencies shall issue other permits within five days after ACMP/OPMP issues the final consistency determination that concurs with the proposed project, unless the resource agencies consider additional time necessary to fulfill their statutory or regulatory authority.

### **Consistency Determination:**

Consistent as proposed. Based on an evaluation of the project by the Alaska Departments of Environmental Conservation, Fish and Game and Natural Resources, the State of Alaska concurs with the consistency certification submitted by the Alaska Department of Natural Resources.

### **Options for the applicant:**

- **Adopt Alternative Measures.** If the applicant agrees to adopt the alternative measures (not applicable to this proposed determination), the applicant must return the enclosed form or amend the original application to incorporate the alternative measures no later than five days from receipt of this letter.
- **Propose Additional Modifications.** The applicant may, per 6 AAC 50.260(h)(3), also propose other modifications that would achieve consistency for the State to consider. The applicant must return the enclosed form or amend the original application to incorporate the additional modifications no later than five days from receipt of this letter. If the applicant proposes other modifications, additional State review may be required with additional time to conduct further consideration.
- **Request Elevation:** Pursuant to 6 AAC 50.600, the project applicant, a state resource agency, or an affected coastal resource district with an approved coastal district plan that does not concur with this proposed consistency determination may request an elevation of the determination to the Department of Natural Resources commissioner within five days of receiving the proposed determination. A request for elevation must
  - (1) be in writing;
  - (2) be received by the coordinating agency by 5:00 p.m. within five calendar days after the requestor receives the proposed consistency determination; and
  - (3) explain the requestor's concern, including any addition of or modification to an alternative measure identified that would achieve consistency with the enforceable policies of the ACMP.

The applicant, within the five days, also may request an extension of time to consider the alternative measures.

If the applicant or other review participants with elevation rights do not request an elevation or extension within the specified five days, and the applicant adopts the alternative measures, the State will issue a final consistency determination or response.

#### **General Advisories:**

Please note that, in addition to their consistency review, agencies with permitting responsibilities will evaluate this proposed project according to their specific permitting authorities. Agencies will issue permits and authorizations only if they find the proposed project complies with their statutes and regulations in addition to being consistent with the coastal program. An agency permit or authorization may be denied even though the State concurs with the ACMP.

As a result, authorities outside the ACMP may result in additional permit/lease conditions. Participating agencies have advised OPMP conditions may be included in their authorizations solely under their own authority that are not needed for consistency with the ACMP.

If a requirement set out in the project description (per 6AAC 50.265) is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement. Applicants may not use any State land or water without DNR authorization.

#### **ADF&G Operating Permit:**

ADF&G has advised OPMP that the following stipulation will be incorporated into the Operating Permit. These stipulations are being carried solely under their own authority and are not needed for consistency.

- The applicant shall discuss predator exclusion plans with the Mariculture coordinator before the Operation Permit will be issued. The farmer shall monitor any exclusion devices for entanglement of fish and wildlife and shall report all incidences to the Mariculture Coordinator. If, upon inspection, ADF&G finds the exclusion devices have been unattended and are in disrepair, the farmer will be issued a warning and the Mariculture Coordinator will discuss with the farmer a strategy for successful maintenance of the exclusion devices. If, upon a second inspection, ADF&G finds the exclusion devices unattended or in disrepair, the farmer will be cited and fined (AS 16.40.170 class B misdemeanor) and will no longer be allowed the use of exclusion devices at the farmsite.

#### **DNR Aquatic Farm Lease:**

Archaeological Sites: The ACMP Historic, Prehistoric, and Archaeological Resources Standard (6AAC 80.150) requires state agencies and coastal districts to identify areas of the coast which are important to the study, understanding, or illustration of national, state or local history or prehistory. However, the ACMP relies on other governmental programs to protect the identified resources. Comments and recommendations on these sites were received from the State Historic Preservation Officer as follows:

*KET-N030, N031, N032, N033, and KET-N079 (Pond Bay/North Duke Island and West Pond Bay/North Duke Island) These sites have a high potential for cultural resource conflicts and should be surveyed.*

*KET-N034, N035, N036, N037, N038 and KET-080 (South Duke Island and East Duke Island/Morse Cove) These sites have a high potential for cultural resource conflicts and should be surveyed.*

The DMLW has advised OPMP the Aquatic Farm Leases will carry a stipulation stating "if cultural or paleontological resources are discovered as a result of this activity, work that would disturb such resources must be stopped and the Alaska Office of History and Archaeology (907) 269-8721) shall be contacted immediately. The OPMP recommends that the above DNR/DMLW Aquatic Farm Lease stipulation require that the U.S. Army Corps of Engineers (907-753-2712) also be contacted so that consultation per Section 106 of the National Historic Preservation Act may proceed. By copy of this letter, the OPMP is advising the U.S. Army Corp of Engineers of DNR/SHPO's recommendation.

**Ketchikan Coastal District Comments:**

The Ketchikan Gateway Borough Coastal District commented that the KET-N034-038 (*South Duke Island*) sites might interfere with trollers' access to anchorage at Kelp Island. The KGB Coastal District made additional comments about the consistency of the HB 208 program with the District's enforceable policies and those comments will be discussed in the Consistency Evaluation included with the final consistency response.

*On September 17, 2003, the Department of Natural Resources, Aquatic Farming Program, notified OPMP that these sites would be reduced from five to three, and the maximum acreage from 50 acres to 30 acres.*

**U.S. Forest Service Advisories:**

*All of the proposed aquatic farms create some visual impact on the (Misty Fiords National) monument...The overall appearance of the Misty Fiords National Monument Wilderness is of great importance to the public that uses the monument. The Ketchikan-Misty Fiords Ranger District has serious concerns about the visual impacts the farms will have on the monument. The predator netting and work rafts represent the greatest threat to the visual aesthetics of the monument. The work rafts also create the risk that items that conflict with this primitive natural environment will be present in numerous locations along the coastline. To avoid detracting from the primitive natural environment, we recommend that predator netting not be used within the monument. We also recommend that work rafts not be authorized within the monument. Any netting or works rafts that are allowed within the monument should be made of natural-appearing materials and installed and managed in such a way as to minimize any visual impacts on the neighboring uplands.*

*If predator netting is allowed at an inter-tidal farm site, several steps should be taken to minimize the risk to animals. The mesh should be of a size that would prevent a small animal's foot from passing through it and becoming snared. The edges of the netting should be secured in a way that would prevent these animals from getting under the netting. The netting should be*



*inspected regularly to ensure that it has not been torn after raking across barnacles and other sharp objects on the beach as the tide goes in and out.*

**U.S. Forest Service Site-specific Comments:**

*KET-N030-033 (Pond Bay) Special Interest Area, Research Natural Area LUD, no site-specific concerns.*

*KET-N079 (West Pond Bay) Special Interest Area, LUD.*

*KET-N081 and N082 (East Duke Island/Morse Cove Entrance) Special Interest Area, LUD.*

*KET-N080 (East Duke Island/Morse Cove) Special Interest Area, LUD.*

*KET-N034-038 (South Duke Island) Special Interest Area, LUD.*

*We have no site-specific concerns, but we are aware that there are cultural interests in these areas. These areas are important to the Tongass Tribe and the Organized Village of Saxman (OVS). We encourage the pursuit to government-to-government consultation with OVS so the interests of this entity can be included in the deliberations on these proposals.*

**Public Comments**

Comments were received from nine members of the public for the aquatic farm sites proposed in this area. The comments addressed two main concerns, *1/that the opportunity to acquire one or more aquatic farm sites would make public resources available for economic gain, and for only a few people. The advantage of being able to harvest naturally occurring geoducks on some sites was of special concern. 2/Commenters are concerned that the conversion of some areas to aquatic farms will restrict or deny public access to the areas for recreation, hunting, fishing, and safe moorage.*

In permitting an aquatic farm, the Alaska Departments of Fish & Game and Natural Resources require consistency with the Alaska Coastal Management Program and concurrence with the Public Trust Doctrine. ADNRC addresses some public access concerns with stipulations that reserve a public access easement to protect the public's rights under the Public Trust Doctrine of ingress and egress to the public domain and their right to use public lands for navigation, commerce, fishing, and other public trust purposes. ADG&G requires these stipulations to ensure access and to maintain the state's sport, personal use, subsistence and commercial fisheries.

**General Requirements**

Non-inclusive: This consistency determination may include reference to specific laws and regulations, but this in no way precludes an applicant's responsibility to comply with all other applicable State and federal laws and regulations.

Project Changes: This consistency determination is only for the project as described. If, after issuance of a final consistency determination or response, the applicant proposes any changes to the approved project, including its intended use or required authorizations, prior to or during its siting, construction, or operation, the applicant must contact this office immediately to determine if further review and approval of the modifications to the project is necessary. Changes may

if further review and approval of the modifications to the project is necessary. Changes may require amendments to the State authorizations listed in this determination or response, or may require additional authorizations.

Appeal: When the final consistency determination is issued, it is a final administrative decision for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the Superior Court must be made within 30 days of the date of this determination.

Final Consistency Response Prepared By:  
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S/S Sandy Harbanuk  
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December 24, 2003